UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 86
Number 6 *North Carolina Issue*

Article 6

9-1-2008

# Failing to Serve and Protect: A Proposal for an Amendment to a Juvenile's Right to a Parent, Guardian, or Custodian during a Police Interrogation after State v. Oglesby

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# Failing to Serve and Protect: A Proposal for an Amendment to a Juvenile's Right to a Parent, Guardian, or Custodian During a Police Interrogation After *State v. Oglesby*[*]

*"But we cannot believe that a lad of tender years is a match for the police in such a contest [as a custodial interrogation]."*[1]

*"[O]ne of the most common reasons cited by teenage false confessors is the belief that by confessing, they would be able to go home."*[2]

On September 10, 2002, Jaamall Denaris Oglesby was arrested by the Winston-Salem Police Department for a series of robberies.[3] Jaamall was sixteen years old[4] at the time and was later diagnosed with "a major mental disorder and the adaptive behavior level of a mentally retarded person."[5] The next day, while Jaamall was still in custody, police officers interrogated him about the robberies in question and also about a murder that occurred during the early morning of September 10, 2002.[6] Jaamall testified that the police

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1. Haley v. Ohio, 332 U.S. 596, 599–600 (1948).

2. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 969 (2004).

3. Brief for State-Appellee at 3, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (No. 683PA05). The robberies in question involved two gun-point robberies of convenience stores on September 7 and 8 of 2002. *See Oglesby*, 361 N.C. at 552, 649 S.E.2d at 820. On November 2, 2003, a grand jury indicted Jaamall for two counts of robbery with a dangerous weapon. *Id.* Jaamall eventually pled guilty to both charges on May 24, 2004, but the trial court postponed sentencing him until after his trial for three remaining charges. *Id.*

4. Despite the fact that juveniles who are sixteen or older are tried as adults in North Carolina, *see* N.C. GEN. STAT. § 7B-1501(7) (2007), the Supreme Court of North Carolina has held that the term "juvenile" includes all individuals who have not reached their eighteenth birthday for the purpose of the right to have a parent, guardian, or custodian present during a police interrogation. *See* State v. Fincher, 309 N.C. 1, 9–10, 305 S.E.2d 685, 691 (1983). The Supreme Court reiterated their holding in *Fincher* on this point in *Oglesby*, 361 N.C. at 555, 648 S.E.2d at 822 n.1.

5. Record at 10, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (COA04-1534).

6. Brief for State-Appellee at 1–2, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (No. 683PA05). The murder in question was of Scott Jester, who was working for a cleaning service at Copeland's restaurant in Winston-Salem, North Carolina, during the early morning hours of September 10, 2002. *Id.* at 3. Jester worked with Ron Owens, whose car they used to drive to various job sites. *Id.* After finishing his portion of the job,

officers told him that he "could not leave[,] ... had to talk to detectives[, and] ... did not need an attorney present."[7] Jaamall also testified that when police officers gave him the rights waiver, they told him that he would be prosecuted and given the maximum sentence if he did not sign it.[8] The officers advised Jaamall that if he simply told them "what they wanted to hear," he would "get less time and some charges might be dropped."[9] Jaamall signed the rights waiver and admitted to his involvement in the robberies in question but denied he committed the murder.[10]

After being in custody for more than twenty-six hours, Jaamall finally made an incriminating statement indicating that he had committed the murder in question.[11] Before making that statement, Jaamall asked to speak to his aunt, Cheryl Hairston.[12] Because Jaamall's mother was not able to take care of him at times, Cheryl

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Owens discovered that both Jester and his car were missing. *Id.* Jester's body was discovered later that morning by the side of Interstate 40 with three gunshot wounds in the back of his head. *Id.* at 4–5. Owens' stolen car was later discovered and returned to Owens. *Id.* at 6. Jaamall, Robert Manisfield Davis, Antwan James, and Sarah Cranford were all investigated for involvement in the kidnapping and murder of Jester and the theft of Owens' car. *Id.* at 5.

7. Record at 11, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (COA04-1534).

8. *Id.* at 11.

9. *Id.*

10. Brief for State-Appellee at 1–2, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (No. 683PA05). Jaamall stated that on the morning of September 10, 2002, he and three companions, Sarah Cranford, Robert Manisfeld Davis, and Antwan James, decided to rob a store. Brief of Defendant-Appellant at 7, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (COA04-1534). According to Jaamall, Davis had a gun and they all drove to Copeland's restaurant where Davis forced Scott Jester to get in Jester's car and then gave the gun to Jaamall. *Id.* Davis drove the car on Interstate 40 while Jester and Jaamall sat in the backseat. *Id.* Eventually, Davis stopped the car by the side of the road and told everyone to get out. *Id.* Davis then told Jaamall to shoot Jester, and when Jaamall refused, Davis grabbed Jaamall. *Id.* The gun discharged when Davis grabbed Jaamall, and Davis then took the gun and fired two additional shots into the back of Jester's head. *Id.*

11. Brief of Defendant-Appellant at 5, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (COA04-1534). An incriminating statement is one that "tends to establish the guilt of the accused." BLACK'S LAW DICTIONARY 1445 (8th ed. 2004). The statement consisted of a taped interview that police recorded after questioning Jaamall in an initial non-recorded interview. Brief for State-Appellee at 4, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (No. 683PA05). During this statement, Jaamall said that he shot Jester but "didn't mean to." Brief for State-Appellee at 5, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (No. 683PA05).

12. Brief of Defendant-Appellant at 8, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (COA04-1534). The record is unclear about the exact manner in which Jaamall made this request. In terms of timing, Jaamall spontaneously made his request immediately before the police began a taped interview that he agreed to do. Brief for State-Appellee at 2, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (No. 683PA05).

had played an important role in raising Jaamall.[13] Cheryl considered herself to be "a mother figure" to Jaamall.[14] However, without asking any questions about Jaamall's relationship to his aunt, police officers simply told Jaamall that he could not speak to her until after he made a statement.[15] After he made the statement, Jaamall was allowed to call his aunt.[16] Cheryl testified that Jaamall told her that he had told the detectives what they wanted to hear so that he could call her.[17]

Jaamall was eventually convicted of first-degree murder and sentenced to life imprisonment without parole.[18] Jaamall's ordeal is particularly disturbing given that the North Carolina General Statutes provide that juveniles have a "right to have a parent, guardian, or custodian present during questioning."[19] However, as Jaamall's case progressed through the court system, his statutory right to a guardian or custodian was repeatedly construed against him, and the courts consistently ignored the fact that the police officers did not have enough information at the time they denied Jaamall's request to determine whether Cheryl was Jaamall's guardian or custodian.[20]

This Recent Development will argue that, in light of *Oglesby*, the North Carolina General Assembly should amend the applicable statute to require police officers to determine whether an individual whom a juvenile requests to be present during an interrogation is a parent, guardian, or custodian. It will first explain how *Oglesby* establishes that police officers are not required to determine whether an adult a juvenile requests to speak to during an interrogation is a guardian or custodian. Next, it will describe three policy reasons why police officers *should* be required to make such a determination: not doing so (1) fails to protect the rights of juveniles; (2) creates a bias against juveniles who live in non-traditional homes; and (3) undermines the North Carolina General Assembly's well-founded policy of special protection for juveniles. As to the first reason, this Recent Development will explain how not requiring a determination

13. Brief for Defendant-Appellant at 8, State v. Oglesby, 361 N.C. 550, 640 S.E.2d 810 (2007) (COA04-1534).

14. State v. Oglesby, 361 N.C. 550, 556, 648 S.E.2d 819, 822 (2007).

15. Brief of Defendant-Appellant at 5–6, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (COA04-1534).

16. Record at 12, State v. Oglesby, 361 N.C. 550, 648 S.E.2d 819 (2007) (COA04-1534).

17. *Id.* at 12.

18. *Oglesby*, 361 N.C. at 553, 648 S.E.2d at 820.

19. N.C. GEN. STAT. § 7B-2101(a) (2005). See *infra* notes 23–26 and accompanying text for a full discussion of the statute.

20. See *infra* notes 27–33 and accompanying text for a full discussion of how the North Carolina courts construed Jaamall's case.

about the requested adult permits police officers to behave in a manner that may violate a juvenile's rights during an interrogation. The discussion of the second reason will describe how creating a bias against juveniles who live in non-traditional homes defeats one of the purposes of the Juvenile Code, namely, to provide uniform and equal procedures for all juveniles. Regarding the third reason, this piece will describe why the North Carolina General Assembly's policy of special protection for juveniles is well-founded and should be upheld by requiring police officers to determine whether an individual whom a juvenile requests to be present during a custodial interrogation is a guardian or custodian. This Recent Development will conclude by suggesting a statutory amendment requiring police officers to cease an interrogation to determine whether an adult requested by a juvenile is a guardian or custodian.

As Jaamall's story indicates, juveniles are especially vulnerable to police intimidation tactics[21] and very unlikely to understand their *Miranda* rights.[22] In recognition of these unique vulnerabilities, the General Statutes of North Carolina provide special protection for juveniles during interrogation. A juvenile who has been taken into police custody not only has the standard *Miranda* rights[23] but also the

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21. *See infra* notes 85–92 and accompanying text.

22. *See infra* notes 78–84 and accompanying text. The term "*Miranda* rights" refers to the constitutionally protected right against compelled self-incrimination as articulated in *Miranda v. Arizona*, 384 U.S. 436 (1966).

23. Specifically, North Carolina statute provides:

> (1) That the juvenile has a right to remain silent; (2) That any statement the juvenile does make can be and may be used against the juvenile; . . . (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

N.C. GEN. STAT. § 7B-2101(a) (2005). *See infra* note 35 for the complete text of the statute. These enumerated rights mirror the rights of adults in police custody. *Miranda* requires that prior to any custodial interrogation, a person must be warned that

> he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

*Miranda*, 384 U.S. at 479. Statements made during a custodial interrogation are only admissible in court if the prosecution proves that *Miranda* warnings were given and the individual "knowingly and intelligently" waived her rights. *Id. See generally* E.H. Shopler, Annotation, *Necessity of Informing Suspect of Rights Under Privilege Against Self-Incrimination, Prior to Police Interrogation*, 10 A.L.R.3D 1054 (outlining American jurisdictions' application of *Miranda* and providing a general discussion of the holding). The Supreme Court of the United States determined a year after *Miranda* that the same rights applied to juveniles. *See In re* Gault, 387 U.S. 1, 55 (1967) ("We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it

"right to have a parent, guardian, or custodian present during questioning."[24] A juvenile must be informed of all of these rights prior to questioning.[25] Additionally, "[i]f the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning."[26]

Before Jaamall's murder trial, he moved to suppress his statement made during the interrogation on the grounds that his right to a parent, guardian, or custodian was violated when the interrogation continued despite the fact that he asked to speak to his aunt.[27] After a pretrial hearing, the trial court denied the motion to suppress based on the finding that Jaamall's aunt was not his parent, guardian, or custodian.[28] The trial court did not address the fact that the police officers did not have enough information to determine that Cheryl was not Jaamall's guardian or custodian at the time they denied his request to speak to her.

The Court of Appeals of North Carolina affirmed the trial court's decision by holding that "[b]ecause defendant's aunt was not a parent, custodian, or guardian, he had no right to her presence during questioning."[29] Because Jaamall conceded in his appellate brief that his aunt was not a parent or a custodian, the court focused on the determination of whether the aunt was a guardian.[30] The court defined guardianship as "legal authority conferred by the government upon the guardian as to a minor" and, importantly, noted that legal authority can be conferred by any governmental agency that

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is with respect to adults."). *See generally* W.J. Dunn, Annotation, *Applicability of rules of evidence in juvenile delinquency proceeding*, 43 A.L.R.2D 1128 (providing a general discussion of criminal procedures involving juveniles in American jurisdictions).

24. N.C. GEN. STAT. § 7B-2101(a) (2005).

25. *Id.*

26. N.C. GEN. STAT. § 7B-2101(c) (2005). To some extent, this mirrors language in *Miranda*, which states that if the defendant "indicates *in any manner* and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning." *Miranda*, 384 U.S. at 444–45 (1966) (emphasis added). *Miranda* also requires that "[i]f the individual indicates *in any manner*, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Id.* at 473–74 (emphasis added).

27. State v. Oglesby, 361 N.C. 550, 552, 648 S.E.2d 819, 820 (2007). A violation of the right to speak to a parent, guardian, or custodian will result in suppression of statements made by the defendant during an interrogation. *See infra* note 47.

28. *Id.* at 552–53, 648 S.E.2d at 820. The trial court also found that defendant's request to speak to his aunt " 'was not a time specific request,' nor did defendant say he would not speak with the officers until he was allowed to place the call." *Id.* at 553, 648 S.E.2d at 820.

29. State v. Oglesby, 174 N.C. App. 658, 663, 622 S.E.2d 152, 156 (2005).

30. *Id.* at 662, 622 S.E.2d at 155.

acknowledges directly or indirectly that the person has lawful authority over the minor.[31] For example, a local school system would be indirectly acknowledging an adult's authority over a minor if the school allowed the adult to enroll the minor in school. Again, the court did not address the fact that the police officers did not have enough information to determine that Cheryl was not Jaamall's guardian at the time they denied his request to speak to her.

The Supreme Court of North Carolina accepted the case on discretionary review,[32] and the majority affirmed the ruling by the court of appeals that the trial court did not err in denying Jaamall's motion to suppress his incriminating statement since Cheryl was not Jaamall's "guardian."[33] Consistent with the trial court and the court of appeals, the majority did not consider the fact that the police officers did not have enough information to determine that Cheryl was not Jaamall's guardian at the time they denied his request to speak to her.

The court's silence on this issue establishes that police officers are not required to determine whether an adult a juvenile requests to speak to during an interrogation is a guardian or custodian. While North Carolina General Statute § 7B-2101 provides general interrogation procedures for a juvenile, the statute does *not* provide any procedure for a circumstance in which a juvenile asks to speak to an adult who is not immediately identifiable as a parent, guardian, or custodian.[34] The Supreme Court of North Carolina has interpreted a

31. *Id.*
32. *Id.* at 551, 648 S.E.2d at 819.
33. *Id.* at 552, 648 S.E.2d at 820.
34. N.C. GEN. STAT. § 7B-2101 (2005) provides as follows:

(a) Any juvenile in custody must be advised prior to questioning:
(1) That the juvenile has a right to remain silent;
(2) That any statement the juvenile does make can be and may be used against the juvenile;
(3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
(4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.
(b) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

juvenile's statutory right to a parent, guardian, or custodian as subject to the same protections as an adult's right to an attorney.[35] These protections require that just as interrogation of an adult must cease if the adult requests to speak to an attorney, so must interrogation of a juvenile also cease if the juvenile asks to speak to a parent, guardian, or custodian.[36] However, before *Oglesby*, the North Carolina courts had not been presented with a situation in which a juvenile asked to speak to an individual who was not immediately identifiable as a guardian or custodian. The question remained as to whether police officers must cease interrogation to determine whether the requested individual is a guardian or custodian, or if police officers could merely deny the request and let the courts sort it out later.

*Oglesby* presented this exact situation: Jaamall asked to speak to his aunt, an adult who was not immediately identifiable as a guardian or custodian. This provided the courts an opportunity to speak on the proper procedure when a juvenile requests an adult whose legal relationship to the juvenile is unclear. However, instead of addressing this issue, the courts remained steadfastly focused on making a determination after the fact regarding whether the requested individual was actually a guardian or custodian.[37] Justice Patricia Timmons-Goodson alone recognized the problem and suggested in a dissenting opinion that a proper test would focus on what the officers knew about the requested individual's status at the time of the juvenile's denial to speak with the person.[38] She stated that "[a] test centering on the circumstances of the aunt *as known to the detectives during the interrogation*, rather than following a subsequent legal determination, fits better with the stated objectives

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(c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.

(d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

This statute was enacted in 1999 when the legislature updated the Juvenile Code, but the exact wording of this particular part of the Code has been the same since at least 1979. *See supra* note 23 for a discussion of the applicability of *Miranda* rights to juveniles.

35. State v. Smith, 317 N.C. 100, 106, 343 S.E.2d 518, 521 (1986), *abrogated on other grounds by* State v. Buchanan, 353 N.C. 332, 543 S.E.2d 823 (2001) ("We hold that the juvenile's right . . . to have a parent present during custodial interrogation[] is entitled to similar protection [as an adult's right to have an attorney present].").

36. *Id.* at 107, 343 S.E.2d at 521; State v. Hunt, 64 N.C. App. 81, 86, 306 S.E.2d 846, 850, *disc. rev. denied*, 309 N.C. 824, 310 S.E.2d 354 (1983).

37. *See Oglesby*, 361 N.C. at 555–56, 648 S.E.2d at 822.

38. *Id.* at 556–59, 648 S.E.2d at 823–24 (Timmons-Goodson, J. dissenting).

of the Juvenile Code."[39] Under such a test, Jaamall's confession would be inadmissible since the police were not "aware of the aunt's precise legal status when they chose to press ahead in their interrogation."[40] Justice Timmons-Goodson argues that this kind of test is preferable to the majority's opinion in *Oglesby* which effectively encourages improper conduct by police officers.[41] She notes that the majority's reasoning is akin to admitting a statement after the police denied a request to speak to an attorney if the requested attorney turned out to be improperly licensed as a result of delinquency in Bar dues.[42] While the Supreme Court of North Carolina was free to embrace this kind of test, it chose not to do so. Therefore, this decision establishes that police officers do not need to make a formal determination regarding the legal status of a requested individual, but can merely deny the request, continue the interrogation, and let the courts sort it out later.

As Justice Timmons-Goodson's dissent indicates, not requiring police officers to determine whether an adult that a juvenile requests during an interrogation is a parent, guardian, or custodian is potentially harmful to juveniles. First, the policy permits police officers to behave in a manner that is likely to violate a juvenile's right to speak to a guardian or custodian during an interrogation. Specifically, if a juvenile asks for someone who *is* actually a guardian or custodian, but not immediately identifiable as such, police officers may simply deny the request and continue the interrogation. Guardians or custodians who are not immediately identifiable as such include anyone who the juvenile would not refer to as "mom" or "dad," such as an aunt or grandparent. Failure to identify an adult as a guardian or custodian is not only possible, but especially *likely*, given the prevalence of juveniles living with a non-traditional caregiver in North Carolina. Estimates indicate that 201,356 juveniles in North Carolina are not living with their parents.[43] This translates to approximately 10.3% of the entire juvenile population in North Carolina.[44] Of the juveniles who do not live with their parents, 83.3%

39. *Id.* at 559, 648 S.E.2d at 824.
40. *Id.*
41. *Id.* at 558–59, 648 S.E.2d at 824.
42. *Id.* at 559, 648 S.E.2d at 824.
43. U.S. Census Bureau, Children and the Households They Live in: 2000, Census 2000 Special Reports, at 4 (Mar. 2004), *available at* http://www.census.gov/prod/2004pubs/censr-14.pdf.
44. *Id.*

of them live with relatives, while only 2.9% live with foster parents.[45] Since foster parents are court-appointed guardians, police are likely to be able to immediately identify a request for a foster parent as a request for a guardian. However, a request for a relative who qualifies as a guardian is *not* likely to be immediately identifiable to police officers as a request for a legal guardian since juveniles will probably ask for "my aunt" or "my grandfather." Because police may deny these kinds of requests under *Oglesby* without further investigation,[46] the case allows officers to behave in a manner that is likely to violate a juvenile's right to speak to a guardian or custodian.

Of course, a conscientious police officer *would* determine whether a requested individual is actually a guardian or custodian in order to avoid the possibility of a confession being barred from evidence at trial. The appellate courts of North Carolina have repeatedly held that if a juvenile is denied the right to speak to a parent, guardian, or custodian during a custodial interrogation, then any statements made by the defendant during the interrogation must be suppressed at trial.[47] Therefore, simply asking a few questions about a requested adult during the interrogation of the juvenile would help to ensure that a confession would be admissible in court. Doing so would also be beneficial for judicial economy as it would potentially decrease the number of pre-trial hearings regarding the validity of a confession.

However, there is no guarantee that officers will be conscientious about such a detail, especially when they are likely to be focused on the ultimate goal of getting a confession.[48] Because detectives are

45. *Id.* The remaining 13.8% of juveniles in North Carolina live with other "non-relatives" such as a roommate or unmarried partner, by themselves, or with a spouse. *Id.*

46. *See supra* text accompanying notes 37–42.

47. *See, e.g.*, State v. Smith, 317 N.C. 100, 108, 343 S.E.2d 518, 522 (1986), *abrogated on other grounds by* State v. Buchanan, 353 N.C. 332, 543 S.E.2d 823 (2001); State v. Branham, 153 N.C. App. 91, 99, 569 S.E.2d 24, 29 (2002) (holding that a juvenile defendant's confession must be suppressed because the defendant was denied his right to a parent after he invoked that right during a police interrogation); *see also* State v. Hunt, 64 N.C. App. 81, 86, 306 S.E.2d 846, 850 (1983) (holding that continuing an interrogation despite a juvenile's request to speak to a parent was "a clear and direct violation of *Miranda*").

These holdings are an extension of the "fruit of the poisonous tree" doctrine which excludes not only evidence that is illegally obtained but also all evidence that directly results from illegally obtained evidence. *See generally* 29 AM. JUR. 2D *Evidence* § 633 (1994).

48. *See* Saul M. Kassin, et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 383–84 (2007) ("The stated objective of interrogation is to move a presumed guilty suspect from denial to admission.").

mainly measured by their capacity to solve cases, the motivation is strong to avoid any unnecessary roadblocks to obtaining a confession.[49] Halting an interrogation to determine whether a requested individual is a guardian or custodian may slow the pace of the interrogation and also affect the power dynamic the officer is trying to establish. Commentators have described standard interrogation techniques as a "two-step psychological process" in which the police officer first tries to convince the suspect that he has no way out and then tries to persuade the suspect that his best option is to confess.[50] Ceasing the interrogation in order to examine a juvenile's request for an adult may diminish the suspect's sense that she is trapped, thus slowing the process of getting a confession.[51] Additionally, the presence of a relative or friend is often a particularly large roadblock to attaining an admission of guilt, as a friendly third party can intervene and shield some of the psychological pressure officers often use to obtain confessions.[52] Therefore, when an officer is confronted with a situation in which a juvenile has requested an individual who is not immediately identifiable as a parent, guardian, or custodian, the officer is likely to simply deny the request. This denial may violate the juvenile's right to have a parent, guardian, or custodian present during the interrogation if the requested individual *is* actually a parent, guardian, or custodian. While it is true that requiring police officers to make determinations as to whether a requested individual is actually a guardian or custodian may be inconvenient and slow down the pace of the interrogation, it is a small price to pay to ensure that juveniles' rights are protected and all relevant evidence is available for admission at trial.

In addition to failing to adequately protect a juvenile's rights, the current law as established by *Oglesby*[53] also creates a bias against juveniles who live in non-traditional homes with someone other than a parent. This defeats one of the enumerated purposes of the Juvenile Code. The North Carolina General Assembly explicitly states that part of the purpose of the Juvenile Code is "[t]o provide

49. *See id.* at 384.

50. *Id.*

51. *See* David L. Sterling, *Police Interrogation and the Psychology of Confession*, 14 J. PUB. L. 25, 38–39 (1965) (explaining how the interrogation process is designed to strip the subject of every psychological advantage and induce him to feel isolated and anxious).

52. *Id.* at 43 (discussing how the presence of a relative or friend complicates the interrogation process).

53. For a discussion of the policy established in *Oglesby*, see *supra* notes 37–42 and accompanying text.

uniform procedures that assure fairness and equity."[54] Therefore, the General Assembly must have intended for juvenile proceedings to be essentially equal for juveniles cared for in traditional homes by their parents and for those cared for in non-traditional homes by relatives or others. However, the current state of the law under *Oglesby* distinctly disadvantages juveniles who live in non-traditional homes.

The reason a juvenile in a custodial interrogation has a right to the presence of a parent, guardian, or custodian is presumably so that the adult may assist in protecting the juvenile's rights.[55] During an interrogation, a juvenile who lives in a traditional home with her parents is able to ask for "my mom" or "my dad." Because such a request refers on its face to a parent,[56] police officers will be forced to cease the interrogation immediately in order to provide the requested parent's presence to the juvenile.[57] However, a juvenile who lives in a non-traditional home with someone other than a parent is not able to ask for a parent because the parents are either unwilling or unable to care for the juvenile. Therefore, a juvenile in a non-traditional home will have to ask for a guardian or custodian in order to assert his right.[58] A guardian or custodian is likely not to be immediately identifiable as such. For instance, the guardian or custodian may be a grandparent, uncle, or aunt. If an individual is not immediately identifiable as a guardian or custodian, *Oglesby* allows police officers to deny the request without making a determination as to whether the requested individual is actually a guardian or custodian.[59] This disadvantages juveniles who live in non-traditional homes and then

54. N.C. GEN. STAT. § 7B-1500(4) (2007).

55. Part of the purpose of the Juvenile Code is to "protect the constitutional rights of juveniles," *id.*, and the right to a parent, guardian, or custodian is listed within the same section as a juvenile's constitutionally protected rights against self-incrimination. N.C. GEN. STAT. § 7B-2101(a) (2007).

56. Juveniles have a right to a parent during an interrogation. § 7B-2101(a)(3).

57. Once a juvenile defendant has requested the presence of an attorney, parent, guardian, or custodian, the defendant may not be interrogated further "until [counsel, parent, guardian, or custodian] has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.' *State v. Branham*, 153 N.C. App. 91, 95, 569 S.E.2d 24, 27 (2002) (quoting *Michigan v. Jackson*, 475 U.S. 625, 626, 106 S.Ct. 1404, 1406, 89 L.Ed.2d 631, 636 (1986) (alterations in original))." State v. Oglesby, 361 N.C. 550, 557, 648 S.E.2d 819, 823 (2007) (Timmons-Goodson, J., dissenting).

58. § 7B-2101 (a)(3).

59. *See supra* notes 37–42 and accompanying text. Of course, if the individual is actually a guardian or custodian, the courts will establish the right later, but that does not change the fact that a police officer may very well deny a juvenile's request to speak to an individual who is not immediately identifiable as a guardian or custodian at the time of the interrogation and simply allow the courts to sort it out later. *See supra* note 47 and accompanying text.

forces them to wade through the court system to establish a right that should have been respected during the interrogation. Juveniles who live in non-traditional homes are already likely to have been the victims of a string of stressful experiences[60] and for the criminal justice system to continue to disadvantage them is to add insult to injury.

While the sheer number of juveniles living in non-traditional homes makes them an important group to protect from police abuse,[61] the need for protection becomes even more crucial when considered in light of the increased likelihood that juveniles from non-traditional homes will be charged with crimes. Research has repeatedly shown that "children who are separated from a biological parent are more likely to offend than children from intact families."[62] If separation from one biological parent can increase the likelihood of juvenile delinquency, then separation from both parents is also likely to increase delinquency, perhaps even to a greater extent.[63] "Much research suggests that frequent changes of parent figures predict offending by children."[64] For instance, a study in Denmark of 500 males "found that divorce followed by changes in parent figures" made juveniles 65% more likely to be criminally involved.[65] Studies in New Zealand and the U.S. reached similar conclusions in regard to changes in parental figures.[66] The United States Office of the Surgeon General has also identified "broken homes" and "separation from parents" as risk factors for juvenile delinquency.[67] While researchers have developed multiple theories to explain the connection between broken homes and juvenile delinquency, the theory that research seems to support most is that separation from

60. DAVID P. FARRINGTON & BRANDON C. WELSH, SAVING CHILDREN FROM A LIFE OF CRIME: EARLY RISK FACTORS AND EFFECTIVE INTERVENTIONS 68–69 (2007) (noting that stressful experiences include separation from parents and changes in parental figures).

61. *See supra* note 43 and accompanying text.

62. FARRINGTON & WELSH, *supra* note 60, at 67.

63. Studies indicate that general "parental rejection" tends to lead to juvenile delinquency. *See* Stacey E. Holmes, James R. Slaughter & Javad Kashani, *Risk Factors in Childhood That Lead to the Development of Conduct Disorder and Antisocial Personality Disorder*, 31 CHILD PSYCHIATRY & HUM. DEV. 183, 187 (2001).

64. FARRINGTON & WELSH, *supra* note 60, at 68.

65. *Id.* at 68–69.

66. *Id.* at 68.

67. Michael Shader, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Risk Factors for Delinquency: An Overview*, at 4, *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/frd030127.pdf.

parents leads to a string of "stressful experiences" that make children more likely to be antisocial.[68]

Because children in non-traditional homes are more likely to be criminally involved and a large number of juveniles in North Carolina live in non-traditional homes, police officers in North Carolina are likely to interrogate juveniles from non-traditional homes more often than children from traditional homes. During an interrogation, these children from non-traditional homes may try to invoke their right to speak to a guardian or custodian by asking for their primary caregiver (such as an aunt). Since the law does not require police officers to cease the interrogation to discover whether the requested adult is actually a guardian or custodian, officers are likely to simply deny the request in order to expedite a confession. This is exactly what happened in *Oglesby*.[69] Such a situation creates a distinct bias against juveniles from non-traditional homes.

In addition to making it easier for police officers to violate juveniles' rights and creating a bias against juveniles from non-traditional homes, the holding in *Oglesby* creates a third problem: it undermines the North Carolina General Assembly's well-founded policy of special protection for juveniles. The North Carolina General Assembly explicitly stated that part of the overall purpose of the Juvenile Code is to "protect the constitutional rights of juveniles."[70] The General Assembly acted on this policy by providing means of protection beyond the standard *Miranda* warnings.[71] Specifically, juveniles have a right not only to an attorney during an interrogation, but also to a "parent, guardian, or custodian."[72] North Carolina courts have recognized this policy of special protection by holding that the State's burden to protect a juvenile defendant's rights is higher than the burden to protect the rights of an adult defendant.[73]

68. FARRINGTON & WELSH, *supra* note 60, at 68–70. Antisocial behavior is strongly linked to criminal behavior. *See* Holmes, Slaughter, & Kashani, *supra* note 63, at 183–84.

69. 361 N.C. at 552, 648 S.E.2d at 820 (2007).

70. N.C. GEN. STAT. § 7B-1500 (4) (2007).

71. For a discussion of *Miranda* warnings, see *supra* note 23.

72. N.C. GEN. STAT. § 7B-2101 (a)(3) (2005).

73. *See, e.g.*, *In re* T.E.F., 359 N.C. 570, 575, 614 S.E.2d 296, 299 (2005) ("Our courts have consistently recognized that '[t]he [S]tate has a *greater* duty to protect the rights of a respondent in a juvenile *proceeding* than in a criminal prosecution.' "); *In re* Stallings, 318 N.C. 565, 576, 350 S.E.2d 327, 333 (1986) (Martin, J., dissenting) ("Juveniles are not, after all, miniature adults. Our criminal justice system recognizes that their immaturity and vulnerability sometimes warrant protections well beyond those afforded adults."); State v. Fincher, 309 N.C. 1, 24, 305 S.E.2d 685, 699 (1983) (Martin, J., concurring) ("The state has a *greater* duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution."); *In re* Meyers, 25 N.C. App. 555, 558, 214 S.E.2d 268, 270 (1975)

The Supreme Court of the United States has also recognized the need for special protection of juvenile's rights during interrogation. For instance, in *Haley v. Ohio*,[74] the Court opined that "we cannot believe that a lad of tender years is a match for the police in such a contest [as custodial interrogation]."[75] The Court again strongly affirmed the need for special protection of juveniles when it stated the following in *Gallegos v. Colorado*:[76]

> But a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.[77]

This policy of special protection is well-founded because of juveniles' unique vulnerabilities. Juveniles are uniquely vulnerable for two reasons: (1) they are less likely than adults to understand their rights; and (2) they are distinctly susceptible to police interrogation techniques. As to the first vulnerability, research has revealed that only 20.9% of juveniles understand the standard *Miranda* warnings,[78] while 42.3% of adults are able to comprehend these same warnings.[79] The same study demonstrated that 63.3% of juveniles completely misunderstand at least one crucial word in the warnings, as compared to only 37.3% of adults.[80] The most common misunderstanding for both juveniles and adults concerned the right to have an attorney present—specifically, many did not understand that the attorney could actually be present during police questioning

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("The fact that the present proceeding is not an ordinary criminal prosecution but is a juvenile proceeding . . . does not lessen but should actually increase the burden upon the State to see that the child's rights were protected.").

74. 332 U.S. 596 (1948).

75. *Haley*, 332 U.S. at 599–600.

76. 370 U.S. 49 (1962).

77. *Gallegos*, 370 U.S. at 54. Given a juvenile's special susceptibility, the best policy may be to require the presence of a parent, guardian, or custodian during any juvenile interrogation. *See generally* Robert E. McGuire, Note, *A Proposal to Strengthen Juvenile* Miranda *Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355 (2000) (arguing that the presence of a parent, guardian, or legal counsel should be required in all police interrogations of juveniles).

78. For a general discussion of *Miranda* rights, see *supra* note 23.

79. Thomas Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1153 (1980). The ability to understand *Miranda* warning was measured by ability to paraphrase the rights. *See id.*

80. *Id.* at 1154

rather than at some later time.[81] A startling 44.8% of juveniles did not understand what it meant that they had the right to have an attorney present, while only 14.6% of adults had the same confusion.[82] This may indicate that juveniles in North Carolina also have difficulty understanding that they have the right to have a parent, guardian, or custodian present during an interrogation rather than at some later time.[83] Additionally, 23.9% of juveniles did not understand what it means that "statements may be used against them in a court of law," compared with only 8.5% of adults who did not understand that part of the *Miranda* warnings.[84] These statistics alone justify the special protection that juveniles are given during police interrogations.

Buttressing this statistical data is a juvenile's second unique vulnerability: they are exceptionally vulnerable to police interrogation techniques. Although many believe that juveniles in their mid-adolescence are able to make decisions with roughly the same capacity as adults, there is good reason to question such an assumption.[85] For example, studies indicate that "adolescents tend to discount the future more than adults do and to weigh more heavily short-term consequences of decisions—both risks and benefits—in making choices."[86] Additionally, "adolescents use a risk-reward calculus that places relatively less weight on risk, in relation to reward, than that used by adults."[87] Research in neuroscience also strongly points to the conclusion that adolescents are much less able than adults to engage in "consequential thought," which is essentially the ability to hold several potential outcomes in mind at once while sorting through them to pick the most favorable one.[88] Adolescents

81. *Id.*

82. *Id.*

83. One may consider whether or not this indicates the need to *require* the presence of a parent, guardian, or custodian during a custodial interrogation unless the juvenile explicitly indicates a desire not to have an adult present. *See* McGuire, *supra* note 77, at 1381–86. Some states have begun to bolster juvenile rights during interrogation. For instance, the Ohio Supreme Court held in September of 2007 that a juvenile may not waive his right to counsel unless he is advised by a parent, guardian, or custodian. *In re* C.S., 874 N.E.2d 1177, 1191 (Ohio 2007).

84. Grisso, *supra* note 79 at 1154.

85. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1011 (2003), *available at* http://youthadvocacyproject.org/pdfs/Psychology_Less_Guilty.pdf.

86. *Id.* at 1012.

87. *Id.*

88. Abigail A. Baird & Jonathan A. Fugelsang, *The Emergence of Consequential Thought: Evidence from Neuroscience*, 359 PHIL. TRANSACTIONS ROYAL SOC'Y B:

are also at a disadvantage in relation to adults in that they tend to respond to at least some information with more of a "gut reaction" than an analytical approach.[89] The lack of future-orientation, greater emphasis on reward, inability to think through multiple outcomes, and tendency to use gut reactions in decision-making can be especially harmful during police interrogations. In fact, the most common reason why adolescents falsely confess to crimes is because they believe that they will get to go home if they confess.[90] Studies have shown that the use of police interrogation tactics such as repeated, forceful, and suggestive questions increase the likelihood of a false confession from a juvenile.[91] To make matters worse, police are often trained to use special psychological tactics with juveniles, such as blaming a juvenile's parents, friends, or environment.[92]

While the above studies demonstrate that juveniles as a group are uniquely vulnerable to police interrogation tactics, they only test juveniles who are free from mental disorders or other developmental problems. Juveniles in the criminal justice system are more likely than other juveniles to have a mental health disorder.[93] Some places in North Carolina exceed the national averages for juveniles with mental disorders in the juvenile justice system. In Durham County, for instance, 90% of court-involved youths have a mental disorder.[94] These disorders make it even more difficult for juveniles in high-pressure police interrogations to understand their rights and make good decisions rather than simply doing whatever the police tell them

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BIOLOGICAL SCI. 1797, 1800–01 (2004), *available at* https://www.lanlfoundation.org/Docs/Abigail%20Baird.pdf.

89. Frontline, Inside the Teenage Brain: Interview with Deborah Yurgelun-Todd, http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/todd.html (last visited Aug. 28, 2008).

90. Drizin & Leo, *supra* note 2 at 969.

91. Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 275 (2007).

92. *Id.*

93. Shay Bilchik, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Mental Health Disorders and Substance Abuse Problems Among Juveniles* (July 1998), *available at* http://www.ncjrs.gov/pdffiles1/fs9882.pdf ("It has been estimated that each year, of the youth who come in contact with the juvenile justice system, 150,000 meet the diagnostic criteria for at least one mental disorder, 225,000 suffer from a diagnosable alcohol abuse or dependence disorder, and 95,000 may suffer from a diagnosable substance abuse or dependence disorder.") (citation omitted).

94. Durham County Government, News Release: Durham County wins Grant to Build Mental Health-Justice System Collaboration (Oct. 12, 2006), *available at* http://www.durhamcountync.gov/departments/publ/News_Releases/News_Release.cfm?ID=590.

to do.[95] For instance, the fact that Jaamall suffered from a mental disorder may have made it very difficult for him to understand the situation during his interrogation.[96]

Because juveniles are less likely than adults to understand their rights and are also more susceptible to police interrogations, North Carolina's policy of special protection, manifested by allowing juveniles to have a parent, guardian, or custodian present during interrogation, is well-founded. Of course, the presence of an interested adult is not a guarantee that a juvenile's rights will be protected. In fact, in some instances, the presence of an interested adult may even be detrimental if the adult encourages the juvenile to confess or has some interest in the juvenile confessing.[97] These situations aside, however, the presence of an adult is likely to assist the juvenile in understanding her rights and in making good decisions during the interrogation.[98] Many courts have recognized this by ruling that waivers of juvenile rights are more likely to be voluntary if there is a parent present.[99] Besides helping the juvenile make wise decisions, the mere presence of an interested adult, such as a parent or guardian, can also ease the tension and fear that may affect a juvenile during an interrogation by providing the juvenile with an authority figure who is on his side.[100] This solves the problem of false confessions that result from a juvenile's eagerness to please an

95. *See* Richard Rogers et al., *Knowing and Intelligent: A Study of Miranda Warnings in Mentally Disordered Defendants*, 31 LAW & HUM. BEHAV. 401, 416 (2007) (concluding based on empirical evidence that "even the highest quartile of mental disordered offenders have limited comprehension of the Miranda warnings"). *See generally* THOMAS GRISSO, DOUBLE JEOPARDY: ADOLESCENT OFFENDERS WITH MENTAL DISORDERS (2006) (discussing the pressing problem of juvenile offenders with mental disorders in the criminal justice system); William C. Follette, Deborah Davis & Richard A. Leo, *Mental Health Status and Vulnerability to Police Interrogation Tactics*, 22 CRIM. JUST. 42 (2007) (exploring why individuals with mental disorders are particularly susceptible to police interrogation techniques).

96. *See supra* note 5–11 and accompanying text.

97. Kenneth, J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children From Unknowing, Unintelligent, and Involuntary Waivers of* Miranda *Rights*, 2006 WIS. L. REV. 431, 468–69. The phenomenon of a parent or other interested adult encouraging a juvenile to confess may result from "earnest attempts at teaching the child to be responsible; a belief that children should not have the right to remain silent; or any number of other reasons, including that the parent's interests, in some manner, conflict with the child's." *Id.* at 469 (footnote omitted). This exact problem was an issue in *State v. Jones*, 147 N.C. App. 527, 556 S.E.2d 644 (2001), where the juvenile defendant's guardian, who was his aunt, was present during the interrogation and seemed to intimidate the juvenile into confessing in order to protect her brother who was also a suspect. *Id.* at 533–39, 556 S.E.2d at 649–52.

98. *See* McGuire, *supra* note 77, at 1381–82.

99. *See* King, *supra* note 97, at 462–64.

100. *See* Grisso, *supra* note 79, at 1163.

authority figure such as a police officer.[101] Given North Carolina's policy for special protection of juvenile defendants,[102] it follows that when a defendant asks for an individual who is not immediately identifiable as a guardian or custodian, the interrogation should cease immediately and officers should determine whether that person qualifies as a guardian or custodian. The law is inconsistent if it acknowledges the need for juveniles to be afforded special protection[103] but does not safeguard that protection at the moment the juvenile is most vulnerable.

One might object that requiring police officers to cease an interrogation in order to determine whether a requested adult is a guardian or custodian may be overly burdensome on police officers. For instance, it may slow down the interrogation process and make a confession more difficult to obtain. However, for good reason, the presence of a guardian or custodian is a statutory right in North Carolina.[104] One could argue that the requirement may hinder police officers from doing their job of protecting the public from criminal acts. But not requiring police officers to make such a determination may in fact be counter-productive to the goal of protecting the public from crime.[105] Allowing police officers to continue to deny requests to speak to an adult who is not immediately identifiable as a guardian or custodian without requiring them to determine the status of the individual will likely lead to denials of requests for adults who are actually guardians or custodians.[106] This kind of denial is likely to result in a confession being barred from admission into evidence at trial,[107] which means that convictions of guilty juveniles will be more difficult to obtain since a confession is often a crucial piece of evidence.[108] Recidivism rates from North Carolina show that once a juvenile has been involved in a criminal adjudication (although not necessarily convicted), that juvenile is fairly likely to commit another

101. Drizin & Luloff, *supra* note 91, at 275.

102. *See supra* notes 70–73 and accompanying text.

103. *Id.*

104. See *supra* notes 70–95 and accompanying text for a discussion of why the North Carolina General Assembly's policy of special protection of juveniles is well-founded.

105. According to N.C. GEN. STAT. § 7B-1500 (1) (2007), one of the purposes of the Juvenile Code is to "protect the public from acts of delinquency."

106. *See supra* notes 43–52 and accompanying text.

107. *See supra* note 47 and accompanying text.

108. *See* Anthony X. McDermott & H. Mitchell Caldwell, *Did He or Didn't He? The Effect of* Dickerson *on the Post-Waiver Invocation Equation*, 69 U. CIN. L. REV. 863, 870–71 (describing the significance of confessions in obtaining convictions).

crime within the next three years.[109] Therefore, if a juvenile commits one crime and goes free as a result of his confession being barred, he is fairly likely to commit another crime. The result is that the criminal justice system fails to protect the public from crimes. This contravenes the North Carolina General Assembly's stated purpose of "protect[ing] the public from acts of delinquency."[110] The policy of not requiring police officers to determine whether an adult requested by a juvenile during an interrogation is a guardian or custodian not only fails to protect juvenile rights but may also fail to protect the public from juvenile delinquency. Therefore, it is fitting to consider how the law might be amended to remedy this problem.

Since the Supreme Court of North Carolina has chosen not to recognize the importance of requiring police officers to cease an interrogation to determine formally whether an adult requested by a juvenile during an interrogation is a guardian,[111] the North Carolina General Assembly should act to remedy this problem. The problem could be solved with an amendment that requires police to cease an interrogation when a juvenile asks to speak to an individual who is not immediately identifiable as a parent, guardian, or custodian in order to determine whether the individual falls into any of those categories. This proposed amendment should also include a definition of the word "guardian" since the Juvenile Code does not define the term. Additionally, drafters should consider adding and defining "caretaker" to the list of adults whose presence a juvenile has a right to during a custodial interrogation. Finally, drafters should also consider adding a provision that requires police officers to explain to a juvenile why a particular request was denied.

As to the initial amendment, the language could be as simple as the following:

> If a juvenile asks at any time to speak to an individual who is not immediately identifiable as a parent, guardian, or custodian, the officer shall cease questioning in order to determine if the requested individual is a parent, guardian, or custodian."

Such an amendment raises the important issue of how to define the terms "guardian" and "custodian." Fortunately, the Juvenile Code

109. North Carolina Department of Juvenile Justice and Delinquency Prevention, North Carolina Recidivism Report: A Follow-up Study of Juveniles Adjudicated Delinquent for A-E Felonies in 1999, at 8 (Feb. 2002), *available at* http://www.ncdjjdp.org/resources/statistics_legislative/2002_Recidivism.pdf (concluding that 21% of juvenile offenders adjudicated for A-E felonies recidivated within the three year follow-up period).

110. § 7B-1500(1).

111. *See supra* notes 32–42 and accompanying text.

already defines "custodian," and the courts have to some extent already proposed a definition of "guardian." Regarding "custodian," the subchapter of the Juvenile Code governing undisciplined and delinquent juveniles defines a custodian as "[t]he person or agency that has been awarded legal custody of a juvenile by a court."[112]

Because "guardian" has been defined to some extent by the courts, the following paragraphs will explain how the courts have reached that definition and will propose a way to statutorily codify the definition. The Oglesby court stated that the rules of statutory construction require the court to construe unambiguous statutory words that are not statutorily defined according to their plain meaning without considering legislative intent.[113] This reasoning is supported by a long history of North Carolina cases requiring that statutory words that are not defined by the statute be accorded their "plain and definite meaning" as long as the words are "clear and unambiguous."[114] "Clear and unambiguous" has been defined as meaning that the word has a "single, definite, and sensible meaning."[115] Only if the word in question is ambiguous may the

112. N.C. GEN. STAT. § 7B-1501 (6) (2007). The subchapter of the Juvenile Code governing abuse, neglect, and dependency defines custodian more broadly as "[t]he person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court." N.C. GEN. STAT. § 7B-101 (8) (2007). *Black's Law Dictionary* defines custodian even more broadly as follows: "[a] person or institution that has charge or custody (of a child, property, papers, or other valuables) .... In reference to a child, a custodian has either legal or physical custody." BLACK'S LAW DICTIONARY 412 (8th ed. 1999).

113. State v. Oglesby, 361 N.C. 550, 555–56, 648 S.E.2d 819, 822 (2007). For a discussion of the conflict between the text of the law and the spirit of the law, see generally William N. Eskridge, Jr., *Textualism, The Unknown Ideal?*, 96 MICH. L. REV. 1509 (1998) (discussing Justice Scalia and the new textualism); John F. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70 (2006) (discussing whether there is a meaningful distinction between textualism and purposivism); John F. Manning, *Textualism and the Equity of the Statute*, 101 COLUM. L. REV. 1 (2001) (questioning whether the doctrine of the equity of the statute is meaningful threat to textualism); Frederick Schauer, *Statutory Construction and the Coordinating Function of Plain Meaning*, 1990 SUP. CT. REV. 231 (1990) (discussing why the Supreme Court of the United States has moved toward a textualist approach).

114. *See* Spruill v. Lake Phelps Volunteer Fire Dept., Inc., 351 N.C. 318, 322, 523 S.E.2d 672, 675 (2000); *see also* Crowell Constructors, Inc. v. State *ex rel.* Cobey, 342 N.C. 838, 843, 467 S.E.2d 675, 678–79 (1996); Woodson v. Rowland 329 N.C. 330, 338, 407 S.E.2d 222, 227 (1991); Am. Motors Sales Corp. v. Peters, 311 N.C. 311, 318, 317 S.E.2d 351, 357 (1984); Appeal of Martin, 286 N.C. 66, 77, 209 S.E.2d 766, 774 (1974).

115. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 36, 265 S.E.2d 123, 132 (1980); *see also* State Highway Comm'n v. Hemphill, 269 N.C. 535, 539, 153 S.E.2d 22, 26 (1967); Mascot Stove & Mfg. Co. v. Turnage 183 N.C. 137, 137, 110 S.E. 779, 780 (1922).

courts look to statutory intent.[116] The court in *Oglesby* posits that "guardian" has a "clear and unambiguous" meaning as "[o]ne who has the *legal* authority and duty to care for another's person or property" as defined in Black's Law Dictionary.[117] Besides *Oglesby*, the North Carolina courts have twice defined guardian according to the definition in Black's Law Dictionary[118] and have never accorded the word a contrary definition. Additionally, no North Carolina Statutes provide a definition of "guardian."[119] Because the law in North Carolina has provided a "single, definite, and sensible meaning" of the word guardian, the North Carolina courts are not at liberty to look beyond that definition.[120] Therefore, the courts continue to interpret guardian as "[o]ne who has the *legal* authority and duty to care for another's person or property."[121]

However, this definition does not explain how to determine when an individual has "the legal authority and duty" to care for a

116. Underwood v. Howland, 274 N.C. 473, 479, 164 S.E.2d 2, 6–7 (1968); *In re* Dillingham, 257 N.C. 684, 694, 127 S.E.2d 584, 591 (1962); Victory Cab Co. v. Charlotte, 234 N.C. 572, 576, 68 S.E.2d 433,436 (1951).

117. *Oglesby*, 361 N.C. at 555–56, 648 S.E.2d at 822 (quoting BLACK'S LAW DICTIONARY 566 (abr. 7th ed. 2000)).

118. *In re* A.M.H., No. COA04-188, 2005 WL 1020862, at *3 (N.C. Ct. App. May 3, 2005); State v. Jones, 147 N.C. App. 527, 534, 556 S.E.2d 644, 649 (2001).

119. N.C. Gen. Stat. § 35A-1202 (7) does define the term "general guardian" as "a guardian of both the estate and the person." Number (8) of the same section defines "guardian ad litem" as "a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure." Number (9) defines "guardian of the estate" as "a guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward," and number (10) of the same section defines "guardian of the person" as "a guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of ward." However, neither this statute nor any other North Carolina statute defines the underlying term "guardian." The closest any statute comes to giving a functional definition of the word "guardian" is in describing the duties of a guardian who has been appointed by the courts:

> The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

N.C. GEN. STAT. § 7B-600(a) (2007).

120. *See Food Town Stores, Inc.*, 300 N.C. at 36, 265 S.E.2d at 132.

121. *Oglesby*, 361 N.C. at 555–56, 648 S.E.2d at 822 (quoting BLACK'S LAW DICTIONARY 566 (abr. 7th ed. 2000)).

juvenile. In *State v. Jones*,[122] the Court of Appeals of North Carolina held that this kind of legal authority and duty can still exist for purposes of section 7B-2101(a)(3) of the North Carolina General Statutes, even if authority has not been explicitly vested on an individual by the courts. In *Jones*, the court stated that an individual is a juvenile's guardian if legal authority has been conferred by any branch of the government, such as a local school system or the Department of Social Services.[123] The majority opinion in *Oglesby* seems to accept this approach by noting that the defendant's aunt "never had custody of defendant, that defendant had only stayed with her on occasion but not for any considerable length of time, and that she had never signed any school papers for him."[124] The negative inference is that if these things had been different, the aunt may have been considered to have legal authority and thus been a guardian for the purposes of the interrogation as was the case in *Jones*. This understanding of legal authority is appropriate since defining guardian as merely an adult who has been vested with legal authority by the courts would essentially be the same definition of "custodian" as provided by the Juvenile Code.[125]

Because the precedents of statutory construction are able to satisfactorily produce definitions for the term "guardian," there is no real need for the North Carolina General Assembly to create a different definition for the purpose of juvenile interrogation. However, in order to clarify the definition, especially for police officers who must apply the definitions, codifying a definition in statutory form would be helpful to ensuring proper procedures. A suggested codification is as follows:

> A guardian is an adult who has been conferred legal authority to care for a juvenile's person. Legal authority can be conferred directly by the court system or indirectly by any governmental agency that recognizes the adult's authority over the juvenile.

The North Carolina General Assembly should also consider an additional amendment to the statute including the term "caretaker"

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122. 147 N.C. App. at 540, 556 S.E.2d at 652.

123. *Id.* This understanding of guardian may be understood as akin to a recognition of "construction authority," which *Black's Law Dictionary* defines as "[a]uthority that is inferred because of an earlier grant of authority." BLACK'S LAW DICTIONARY 128 (7th ed. 1999).

124. *Oglesby*, 361 N.C. at 556, 648 S.E.2d at 822.

125. N.C. GEN. STAT. § 7B-1501 (6) (2007) (defining "custodian" as "[t]he person or agency that has been awarded legal custody of a juvenile by a court").

in the list of individuals whose presence a juvenile has a right to during an interrogation. This addition would address situations in which an adult has too recently taken responsibility for a juvenile to be recognized by any governmental agency. These kinds of situations may very well be a problem because of the large number of juveniles in North Carolina who are not living with their parents and not supervised by the Department of Social Services.[126] A suggested definition of "caretaker" is as follows:

> Any person other than a parent, guardian, or custodian who has taken responsibility for the welfare of a juvenile by providing for the juvenile's needs by supplying food, shelter, and other essentials.[127]

The above suggested amendments to the statute will be beneficial by not only helping to protect juvenile rights during an interrogation but also by assisting police officers in determining when a juvenile is entitled to have a requested adult present. When determining whether a requested individual is a guardian, custodian, or caretaker, police officers should ask the juvenile questions regarding whether a court has appointed the adult as a guardian, whether the juvenile lives with the requested adult, whether the adult provides for the juvenile's needs, and whether the adult has ever signed school papers for the juvenile. Admittedly, such a determination will create some inconvenience for police officers and may require the courts to affirm or overrule the officer's determination at a later time. However, as discussed above, the alternative creates even bigger problems.

Although the amendments will have the effect of increasing juvenile rights, they also may raise new issues for law enforcement. For instance, what (if anything) should police officers do if they determine that the requested individual is not a guardian or custodian? Without any direct statutory directive, police officers will not be required to do more than simply grant or deny the request after they have made a determination regarding the status of the

126. *See supra* note 43 and accompanying text.

127. The Juvenile Code subchapter dealing with abused, neglected, and dependent juveniles defines caretaker as "[a]ny person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting." N.C. GEN. STAT. § 7B-101(3) (2007). The proposed definition is purposefully different than the definition in § 7B-101(3) in which the purpose is to protect juveniles from potential abuse by a caretaker. The proposed definition suggests that any individual who purposefully takes responsibility by caring for a juvenile's needs may be considered a caretaker.

requested adult. A denial of the request without an explanation to the juvenile as to why the request is being denied is problematic because of juvenile's unique vulnerabilities.[128] Therefore, a wise amendment would also include a provision requiring police officers to explain to a juvenile why a request for a particular adult has been denied. Such an amendment might be something like the following:

> If a police officer determines that an adult requested by a juvenile is not a parent, guardian, custodian, or caretaker, and therefore denies the juvenile's request to speak to the adult, the police officer must explain to the juvenile why the adult does not fall into any of the statutory categories.

In order to avoid the slew of problems discussed in this Recent Development, the North Carolina General Assembly has the duty to require police officers to determine whether an adult whom a juvenile requests during an interrogation falls into the category of parent, guardian, or custodian. To fully ensure that such an amendment would be effectively applied, the General Assembly should also codify the definition of guardian, consider adding the category of caretaker, and require that police officers who deny a juvenile's request to speak to an adult explain why that person does not fit into any of the categories.

One may wonder if Jaamall Oglesby ever committed the crime he confessed to or if he simply told the officers what they wanted to hear so that he could speak to his aunt.[129] We will never know if things would have been different if, when Jaamall asked to speak to his aunt, police officers had ceased the interrogation in order to determine whether his aunt was a "guardian" or "custodian." The drama of Jaamall's ordeal may have taken a different turn if police officers had explained to Jaamall why his aunt was not a "guardian" or "custodian," thus giving him the chance to request the presence of another adult who may have helped him understand the significance of the situation. It is too late for Jaamall, but it is not too late for the thousands of other juveniles who come from non-traditional homes.[130] These juveniles are at a high risk of being involved in the criminal justice system,[131] and it is that system's duty to diligently protect their rights. It is useless to provide juveniles with special protection by allowing a parent, guardian, or custodian to be present during the

128. *See supra* notes 78–95 and accompanying text.
129. *See supra* note 17 and accompanying text.
130. *See supra* note 43 and accompanying text.
131. *See supra* notes 61–68 and accompanying text.

interrogation, but ignore that promise of protection when the most vulnerable juveniles are involved.

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